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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,439	05/24/2001	Christiaan Beindorff	P 280374 F.7541(V)	9805

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EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 08/27/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

09/863,439

Applicant(s)

BEINDORFF ET AL.

Examiner

Susan Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 9. 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-14 and 17-23 are currently pending.

Election/Restrictions

2. Applicant's election of palm oil for species A, sunflower oil for species B, apples for species C, and spreads for species D in Paper No. 12, dated June 10, 2002 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 1-14 and 17-23 are examined on the merits.

Claim Objections

4. Claims 2-14 and 17-23 are objected to because of the following informalities: The claims do not begin with an article such as "The" or "A." Appropriate correction is required.

5. Claims 5, 22, and 23 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim. Claim 5 refers to two sets of claims, claim 4, and claims 1 or 2. This is very confusing. In addition, claims 5, 22, and 23 depend on other multiple dependent claims. One multiple dependent claim cannot depend on another multiple dependent claim. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 and 17-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 1, 2, 17, and 18 are rendered indefinite by the term "low." It is unclear what molecular weights are encompassed by "low;" therefore, the metes and bounds of the claim cannot be definitely determined.

7. Claim 1 is indefinite because it is not clear what types of extracts are considered to be "natural extracts."

8. Claim 2 is indefinite because it is not clear what tastes are considered to be an "off taste." In addition, the determination of "off taste" seems to be a qualitative rather than a quantitative assessment; thus, it would be difficult to determine definitely what is considered an "off taste."

9. Claim 5 is indefinite because, due to its improper multiple dependent structure, it is very difficult to determine exactly which elements are a required part of the claimed composition. In addition, claim 5 is indefinite because it states that component "C" is a required part of the claim but then states that it can be present in 0%. This inconsistency is indefinite.

10. Claims 5, 20, and 21 are indefinite because "N20" has not been defined.

11. Claim 8 is indefinite it is unclear if this claim is further limiting the characteristics of component A or if it is adding additional ingredients to component A.

12. In claim 9, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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13. Claim 10 is indefinite because it is unclear how much of the fat phase must contain the claimed blend in order to meet the limitation of "at least partly."

14. Claim 11 is rendered indefinite by the use of parentheses. The use of parentheses is considered indefinite because it cannot be determined when the enclosed limitation is or is not to be included in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claims 1-14 and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,948,460 in view of US Pat. No. 4,752,606 and SU 827066.

Applicant's claims are drawn to a composition that contains ursolic acid, oleanolic acid, a glyceride, palm oil, and sunflower oil.

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US '460 teaches a composition containing oleanolic acid and ursolic acid. The acids can be derived from apples (see column 1, lines 63-65 and column 2, lines 17-20). The composition is used to improve the flavor of artificially flavored products (see column 3, lines 49-63).

The reference does not specifically teach adding the oleanolic acid and ursolic acid composition to a food that contains a glyceride, a palm oil, or a sunflower oil. However, these ingredients are well known food ingredients. A person of ordinary skill in the art would be motivated to add the oleanolic acid and ursolic acid composition to foods that contain these ingredients based on the teaching by the reference that the oleanolic acid and ursolic acid composition improves the flavor of foods. For this same reason it would be considered obvious to add the oleanolic acid and ursolic acid to a food spread composition.

The reference also does not teach that the oleanolic acid and ursolic acid have the same purity characteristics claimed by applicant. However, US '606 and SU '066 teach preparing oleanolic acid and ursolic acid extracts in the same manner described by applicant on pages 6 and 7 of the specification (see English abstract of SU '066 and Example 1 of US '606). A person of ordinary skill in the art would recognize the benefits of using the high purity extracts taught by these references in the composition taught by US '460. Purity is a characteristic that is routinely optimized. Thus, a person of ordinary skill in the art would be motivated to use oleanolic acid and ursolic acid extracted in the manner taught by SU '066 and US '606 in the composition of US '460. Since the oleanolic acid and ursolic acid in the references are extracted in the same manner as the oleanolic acid and ursolic acid claimed by applicant, the reference oleanolic acid and ursolic acid would have to have the same characteristics as the claimed oleanolic acid and ursolic acid.

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The references also do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

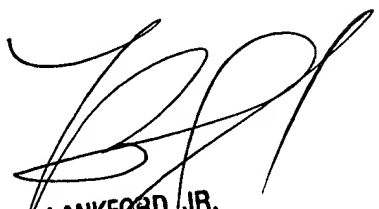
16. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SDC
August 23, 2002


LEON B. LANKFORD, JR.
PRIMARY EXAMINER